

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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|-----------------------------|---|----------------------------|
| EUGENE WHITING, |) | |
| |) | Civil Action No. 06 - 1487 |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Judge Thomas M. Hardiman / |
| |) | Magistrate Judge Lisa Pupo |
| PAUL J. STOWITZKY; DISTRICT |) | Lenihan |
| ATTORNEY FOR THE COUNTY OF |) | |
| ARMSTRONG; and the ATTORNEY |) | |
| GENERAL FOR THE STATE OF |) | |
| PENNSYLVANIA, |) | |
| |) | |

Respondents.

MEMORANDUM ORDER

The above captioned Petition was received by the Clerk of Court on November 8, 2006, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The Magistrate Judge's Report and Recommendation (doc. no. 8), filed on March 14, 2007, recommended that the Petition be dismissed because it does not provide any basis for granting federal habeas corpus relief. Service was made on the Petitioner and he was informed that he had ten (10) days to file any objections. Petitioner filed Objections to the Report and Recommendation (doc. no. 9) on March 21, 2007 claiming that he was being held without sentencing.

As noted in the Report and Recommendation, public docket records belie his assertion. On September 13, 2001, a jury found

Petitioner guilty of the charges of Aggravated Indecent Assault, Indecent Assault and Corruption of Minors. On April 23, 2002, he was sentenced to a term of from thirty-six (36) to one-hundred and twenty (120) months. The Superior Court affirmed his judgment of sentence on June 25, 2003 and Petitioner began serving his sentence on September 13, 2003. Petitioner did not assert any other basis for relief in his federal habeas corpus petition. Moreover, any attack on his conviction would be untimely under 28 U.S.C. § 2244 (d).

After review of the pleadings and the documents in the case, together with the Report and Recommendation and the Objections thereto, the following order is entered:

AND NOW, this 28th day of March, 2007;

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is **DISMISSED**.

IT IS FURTHER ORDERED that the Report and Recommendation (doc. no. 8) of Magistrate Judge Lenihan, dated March 14, 2007, is adopted as the Opinion of the court.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.



Thomas M. Hardiman
United States District Judge

cc: Lisa Pupo Lenihan
U.S. Magistrate Judge

Eugene D. Whiting
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